

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8156 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAHEBUB @ MEBLO SON OF HASAMBHAI MANIYAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 17th September, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (2) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are held to be prejudicial to the maintenance of public order. The Detaining Authority has relied upon four offences punishable under Bombay Prohibition Act registered against the petitioner, two of which are pending investigation. In each of the said cases, substantial quantity of country liquor was recovered from the possession of the petitioner. Besides, statements of two witnesses have also been recorded by the police. The said two witnesses have given statements in respect of the bootlegging activities of the petitioner and its adverse effect on public tranquility and even tempo of life.

The only ground on which the impugned order has been assailed is in the above referred offence registered against the petitioner, the police had taken the samples of the liquor recovered from the petitioner and sent to the Forensic Science Laboratory for chemical examination. Under the representation dated 24th September, 1998, made by one Nasimbanu, the sister of the petitioner, addressed to the Home Minister, the petitioner had demanded FSL reports in respect of the offences pending investigation. However the reports of the Forensic Science Laboratory in respect of the said samples have not been furnished to the petitioner. Thereby the petitioner's right to make an effective representation has been infringed. The averment is not controverted. It is urged that the Detaining Authority while making the order of detention had not relied upon the reports of the Forensic Science Laboratory and, therefore, the same are not supplied to the petitioner. In the matter of RANVIRSINH KALYANSINH (SCA NO. 7490/98, decided on 12th JULY 1999) I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. In the present case, it is not the case of the Detaining Authority that on the date of detention, such reports were yet not available. The petitioner's right to make an effective representation

having thus been infringed, the continued detention of the petitioner is invalid and unlawful.

Petition is, therefore, allowed. The impugned order dated 17th September, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI